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IN THE

Supreme Court of the United States

October Term, 1964
No. 5, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

CARL WHITSON, a Long Beach, California Taxpayer,

Amicus Curiae.

RESPONSE TO DEFENDANT'S OBJECTION TO JURISDICTION AND ISSUES INVOLVED

REPLY TO THE OBJECTIONS BY THE STATE OF CALIFORNIA

PRELIMINARY STATEMENT

By order, entered on May 18, 1964, this Court granted leave to Carl Whitson to file a brief Amicus Curiae. After delaying some thirty days to receive requested copies of documents from the State of California, a short brief was filed. However, after this first brief was at the printers a new California statute (Senate Bill No. 60) was signed into law; and on April 25, 1964 the United States Court of Appeals

for the Ninth Circuit made a decision in regard the same subject lands. So a reply or supplemental brief was prepared, printed, mailed and served on July 30, 1964.

On July 6, 1964 a Motion for Special Permission to Appear for Oral Argument was filed, which showed special reasons therefor; and which has not been passed upon by the Court.

The State of California objects, as it has to all proceeding in this case.

HISTORY AND ISSUES OF THIS CASE
(No. 5, Original)

The instant action was filed in 1945 to test the title, ownership, and/or paramount rights in the three-mile marginal belt of land below low tide line along the Coast of California. It was started and decided as a title action, and resulted in a decision holding that the State of California had no title to or interest in such lands.

United States v. California, 332 U. S. 804-805.

The State of California did not agree and does not agree that the decision was correct or is the settled law. The State has used every device known to legal minds to avoid the effects of the decision or circumvent the enforcements of the decree, including stipulated dividing lines, lengthy hearings before the Special Master, delaying tactics, calling the Pacific Ocean "inland waters," and lobbying to get the Submerged Lands Act passed. Up to the present time the State has been successful in its efforts; and has even worked

the decision to its benefit so that the State has taken about Two Hundred Million dollars ($200,000,000.00) from Long Beach and the taxpayers and is in the process of taking about Five Billion dollars ($5,000,000,000.00) more from the City and taxpayers. It is no surprise that the State objects to any effort to show that such actions by the State are unlawful.

In the decree in *United States v. California*, 332 U. S. 804-805, this Court enjoined the State of California from exercising possession over the lands. Since that date California has continued to let leases for oil and gas and has received millions of dollars from production of oil and gas from such lands; and has continued in possession of all such lands in disregard to the order and decree. So far as shown by any briefs or documents the State of California has not asked for or received from this Court any release from the order or decree. It seems the State of California has been, and is, retaining possession in violation of Court order and injunction.

The State of California, joined by some former agents of the Federal Government, has held lengthy hearings and filed objections to the reports to add the boundary line question or issue to the case. Now the State of California claims the boundary line dispute is the only dispute and that the title question or extent of lands granted under the Submerged Lands Act, or involved in the decision, are no longer at issue. Also the State of California claims the boundary line dispute concerns only the State and the United States, and that the City of Long Beach has no rights or interests therein and the taxpayers should not object. (Page 2, State's Objections).

It is urged that the case at bar was started as a title action, that it is still a title action with no decision explaining just what kind of title the states or their grantees have; or what the funds can be used for and by whom. The title question or issue is the main issue.

The original decision in 1947 was clear and specific in regard to the boundary line, it was the three-mile marginal belt along the Coast of California below low tide line and outside of inland waters. There can be no room for doubt that the Court established the boundary line, but the State has been, and still is, trying to get this Court to circumvent or overrule that decision.

LANDS UNDERLYING INLAND WATERS

Inland waters are exactly what the name implies, they are waters inside of the coastline, such as rivers, lakes, inlets and landlocked bays. Inland waters are not waters of the Pacific Ocean outside of the mainland, yet the State of California is claiming a strip of the Pacific Ocean up to fifty miles wide as inland waters and as part of the so-called unit area.

California asserts, and says the United States apparently concedes, that all waters overlying tide and submerged lands within the City of Long Beach are inland waters within the meaning of the Submerged Lands Act. The State is in error on both statements. First, the United States does not seem to concede that all lands within Long Beach are inland waters; and second, the State for over seventy-five years called the area the "Pacific Ocean" in its grants and agreements. Even if the State and the United States did

agree and stipulate that the area is inland waters this will not change the physical and historical facts one bit, it was and is the Pacific Ocean as shown by the maps. This Court is not bound by such claims or agreements.

United States v. California, 332 U. S. 19, at 40.

This Court has not held that lands underlying the curves or indentations of the Pacific Ocean into the mainland are inland waters and belong to the State. The Submerged Lands Act did not attempt to define or fix the boundary lines of inland waters, and no Senate Hearing referred to the area offshore from Long Beach as inland waters.

LONG BEACH PORT OR HARBOR

The State of California says (p. 5, State's Response) that the United States concedes, as it must, that all water areas enclosed by artificial structures erected prior to May 22, 1953, constitute inland waters for the purposes of the Submerged Lands Act. It is not clear that the United States makes any such concession, and even if it does it is not compelled by the terms of the Submerged Lands Act, or any decision by this Court to do so. The United States seems to agree that the Submerged Lands Act made a present (1953) grant of "all filled-in, made, or reclaimed lands which formerly were lands beneath navigable waters." This does not mean the United States concedes, or that this Court should decide, that all lands landwards of the outermost pier, breakwater, jetty, or pipeline should be inland waters. Breakwaters, jetties and pipelines are not filled in or made lands; and even as to actual filled-in or made lands, it is urged

the dividing line should not be placed at the outermost limits of such lands as they presently exist (1953) or as changed in the future.

The State of California claims the Submerged Lands Act "restored" to the State the equitable expectation or title which the State thought it had before 1947. The United States seems not to agree with the State, and calls the Submerged Lands Act a present grant of the three-mile marginal belt. Neither of the parties concede or mention that Long Beach was granted the offshore submerged lands within its borders; or mention or agree what kind of title and use of funds the City received or has.

TITLE ISSUES

The State of California claims the title issue is not pertinent to the instant case. (State's Response, p. 7) The State seems to forget that the instant case was started as a title case to decide the title question to offshore submerged lands, and now after the passage of the Submerged Lands Act the title issues are more important than ever. No decision by this Court has explained what kind of title the State of California or its grantees received under the act, or for that matter, whether any title did in fact pass, or on what date. Did the lands pass to the State and grantees free of any trusts on the lands or income is of the utmost importance.

It is true the State of California claims that no title did in fact pass to the State and its grantee, but that the Submerged Lands "restored" to the State its equitable expectation (whatever that means) that existed before 1947. In our view this is error.

Webster defines the word "restore:" to bring back to its former strength; repair; rebuild; heal or cure; re-invigorate; renew; amend, reclaim. None of these terms apply to title to lands or the use of the income therefrom. The Submerged Lands Act did not use the words "restore" or equitable expectation; and to define and found a title of valuable lands under such vague terms is impossible. Surely the Congress of the United States did not intend to try to satisfy every expectation of every state. Also this Court has rejected such expectations in some states.

United States v. Louisiana, (1960) 363 U. S. 1.

It is respectfully urged the title issue is not new to the instant case and should be passed upon fully.

DUTIES OF AMICUS CURIAE

It is conceded that an amicus curiae is not a party to the action, but is a friend to the Court with duties to point out the law and errors of the parties, and to make suggestions.

The Amicus Curiae herein is an interested party taxpayer, and took the action after the City of Long Beach failed and refused to take any actions to protect the taxpayers. This was clearly stated in the Petition for Leave to file amicus curiae briefs and the Court was fully advised of the purpose and issues when the permission was granted on May 18, 1964. These issues have not been expanded and need not be.

However, some of the suggestions by the Amicus Curiae have in reality been on behalf of the United States and in its favor, and if adopted by the Court will save for the United States thousands of acres of oil and gas bearing offshore submerged lands. This

is true because of the special knowledge and experience of the Amicus Curiae gained in the over forty years on the ground in Long Beach rather than any lack of diligence by the agents of the United States. It was for this special reason that the Motion to Appear for Oral Argument was filed, and it is respectfully urged it should be granted. It will sure do no harm and may help.

REPLY OR SUPPLEMENTAL BRIEF OF AMICUS CURIAE

The State of California objects to the filing of the Reply or Supplemental Brief by Amicus Curiae as it has to all other matters in the case. (Memorandum in Opposition by the State, p. 12) New matters came up in the form of a late Court decision by the United States Court of Appeals for the Ninth Circuit (the Twombley case) and a new California statute (Senate Bill No. 60) which made the first short brief of amicus curiae inadequate in many respects. Also the State of California delayed the furnishing of copies of briefs or documents until after the first brief was printed.

It was the intent of the Reply or Supplemental Brief of Amicus Curiae to clarify the issues and rights of the City of Long Beach and the taxpayers thereof; also it was a reply to some of the claims by the State of California. It did not intend to raise new issues except as new issues arose, which they did.

It is respectfully urged the Reply or Supplemental Brief of Amicus Curiae should be read and considered before a decision is reach by this Court. Here again it can sure do no harm and may well help.

A LATE CASE AND THE ISSUES

As heretofore pointed out the United States Court of Appeals for the Ninth Circuit, by a three-judge division decided on June 25, 1964, the case of *Twombley v. City of Long Beach*, et al, adverse to plaintiff, (not yet reported but attached to Reply Brief of Amicus Curiae as Appendix "A"). The real issues in that case were the title to and extent of lands granted to the City of Long Beach by the terms of the Submerged Lands Act, and the proper use of the income therefrom by the City. The issues in the *Twombley* case are essentially the same as the issues in the instant case, and it may well be this Court will desire and order that both cases be consolidated for decision. However, on the other hand, this Court may desire to hear and decide the *Twombley* case on appeal or writ of certiorari after the instant case has been decided as a guide line for the *Twombley* case. The issues are so important to the various states and their cities and grantees as well as the United States and the citizens, that it is hoped this Court will decide all matters and issues involved in either case. The issues are especially important and urgent to Long Beach and the taxpayers thereof.

CONCLUSION

It is respectfully suggested that this Court order all briefs and documents filed and that a full and complete decision on all matters be issues in due time.

Also the Amicus Curiae requests that this Court grant permission for oral argument by the attorney

of record for Amicus Curiae; and for such other and further orders or decisions as the Court deems proper.

Respectfully submitted,

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